



# The Higher Education (Wales) Bill

A written submission to the Children, Young People and Education Committee

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## Introduction

1. ColegauCymru welcomes the opportunity to respond to the Children and Young People's Committee's consultation on the Higher Education (Wales) Bill. ColegauCymru represents the 15<sup>1</sup> further education (FE) colleges and FE institutions in Wales.<sup>2</sup> In 2011/12, there were 214,850 individual students attending college and 229,615 enrolments.<sup>3</sup> Colleges are major providers of general education provision in Wales, helping to produce some of the best learner outcomes. Colleges are the predominant providers of funded vocational and technical education in Wales at level 3 and below, providing about 85% of the total provision.
2. ColegauCymru is pleased to be invited to give oral evidence on the Higher Education (Wales) Bill as colleges are key providers in the provision of higher level qualifications in Wales (from level 4 to level 7), with around 7,000 students studying HE courses in colleges. Around 80% of higher education (HE) students at colleges are part-time learners. In this submission to the committee we will give some background to the funding and quality assurance systems relating to college-based higher education in Wales followed by responses to the questions posed by the committee on the Bill.
3. The principles of the Higher Education (Wales) Bill have clearly been informed by the government's *Policy Statement on Higher Education* (June 2013). In line with this policy, ColegauCymru agrees that the allocation of funding and student numbers should follow a 'whole system approach' and not be based on market competition or on favouring particular types of HE providers. Funding and policy should instead be focussed on the delivery of the **most relevant and beneficial higher education programmes for learners in Wales**. We endorse the role of proper planning from the Welsh Government and HEFCW to ensure that national and regional learner needs are delivered through a coherent higher education system.

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<sup>1</sup> The 15 include 10 FE corporations including St David's Catholic College; the two FE institutions - WEA Cymru and YMCA Community College; and The College Merthyr Tydfil, Coleg Sir Gâr and Coleg Ceredigion which are part of university groupings.

<sup>2</sup> In this paper the terms 'FE college' and 'college' are used to cover FE colleges and FE institutions.

<sup>3</sup> *Further Education, Work-Based Learning and Community Learning in Wales 2011/12 SDR 48/2013*, Welsh Government (March 2013).

4. We also support the *Policy Statement* and its central emphasis on **widening access to higher learning**. This should remain at the heart of HE policy in Wales and it is an aim that should underpin all aspects of higher education provision in Wales. We believe that widening access to HE in Wales is not only a social justice imperative, but is also critical for Wales' economic success in relation to addressing key skills gaps and in meeting employer demand at a local and regional level.
5. Crucial to both the skills and social justice agendas **is the maintenance of part-time credit funding for HE courses**. While the Explanatory Memorandum of the Bill states that such funding will be maintained for the "foreseeable future" (s.112) it needs to be reiterated that without the maintenance of the current level of credit funding, it is likely that there would be a massive drop-off in the uptake of part-time higher education in Wales – as there has been in England since a loans-based system was introduced in 2012. This would have profoundly negative consequences for those wishing to re-skill following a career change, a change of personal circumstances or redundancy and would set back the widening access agenda for adult learners considerably.

### College-based higher education in Wales

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6. Five colleges are directly funded by the Higher Education Funding Council for Wales (HEFCW) for higher education provision in the current academic year. These are Grŵp Llandrillo Menai, Coleg Sir Gâr, Gower College Swansea, Bridgend College, and NPTC Group. The clear majority of higher education provision at colleges in Wales is, however, not directly funded through HEFCW but is arranged via franchise agreements with higher education institutions (HEIs) with degree awarding powers. Three colleges - Coleg Ceredigion, Coleg Sir Gâr, and The College Merthyr Tydfil - are part of university groups. The type and range of franchise arrangements vary quite widely within Wales - there is no set template for such arrangements. Depending on the course provision offered by each institution, a college may have franchise arrangements with multiple universities.
7. Increasingly colleges are, however, also involved in providing high-level qualifications within apprenticeship and professional frameworks as part of their successful work-based learning operations. This is a new development since 2012, when Higher Apprenticeships were launched in Wales. Many of these qualifications, which are awarded under the National Qualifications Framework (NQF) or the Qualifications and Credit Framework (QCF), do not show up in the official statistics collected for 'traditional' higher education qualifications (which are awarded under the Quality Assurance Agency (QAA) for higher education's

Framework for Higher Education). Qualifications included in these apprenticeship frameworks include high level professional and technical qualifications relating to, for instance, the training of legal executives, or qualifications for engineering trades or other occupational areas. These courses make an important contribution to raising higher skills levels in Wales.

8. These professional qualifications are not generally funded by HEFCW but rather by the Welsh Government's Department of Education and Skills (DfES) directly, through work-based learning contracts and other grant arrangements. The responsibility for assuring the quality of these programmes in Wales falls to the provider, the awarding organisation and Estyn - as an inspectorate, rather than to provider and the QAA.
9. Despite colleges' growing role in the provision of high level skills programmes it should be clear that colleges do not wish to become 'mini-HEIs' within a market-driven HE sector. Duplicate provision and nugatory competition in HE courses is not in the interest of students or taxpayers. Instead, as the independent *Review of Higher Education in Wales* stated:

“focus [for providers] should be on collaborative building of strength and capacity and on enabling all partners to build on and exploit their appropriate strengths and specialisms while at the same time avoiding costly and needless competition. This should...[avoid] the risk of mission drift among all partners.”<sup>4</sup>
10. This is a vision of high level learning that ColegauCymru would wish to endorse.

## Answers to questions posed by the Committee

### Is there a need for the Bill?

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11. ColegauCymru concurs with the principles of the HE (Wales) Bill as set out in the Explanatory Memorandum of the Bill. The Bill meets a clear need to create a level playing field in the regulatory system applying across different types of HE providers in Wales. This is something that is lacking as, for full-time students, the means of supporting higher education provision shifts from direct grant-in-aid to institutions towards student loan support (which is financially supported by the Welsh Government and supplied by the Student Loans Company on their behalf).

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<sup>4</sup> See the *Report of the Independent Review of Higher Education in Wales* (2008) Welsh Government, para.90, p.37.

Under the provisions of the Bill, were it to become an Act, providers wishing for their students to qualify for student support from the Welsh Government must opt in to either 'automatic designation' status or for case-by-case designation for their programmes.

12. This regulatory clarification and consistency is clearly to be welcomed. ColegauCymru welcomes, in particular, the provisions of the Bill that **limit designation for student support purposes to those HE providers that have charitable status**. This provision of the Bill will ensure that the increasingly constrained public resources in relation to education funding are not channelled to providers that may top-slice a portion of that public resource as a profit margin.
13. There are clear indications that opening up student support provision to for-profit private organisations in England has caused significant problems and has been an expensive drain on the public purse.<sup>5</sup>

### **Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum (EM)?**

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14. ColegauCymru is of the view that the provisions of the Bill generally meet the objectives outlined in the Bill. The Welsh Government has acted promptly in attempting to regulate higher education provision in Wales within the new regime of funding HE. The need to regulate higher education consistently has been widely recognised in England, as well as in Wales. That the Welsh Government is taking action in a timely manner is to be welcomed.

### **Are the sections of the Bill as drafted appropriate to bring about the purposes described in the EM? If not, what changes need to be made to the Bill?**

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15. As noted above, ColegauCymru generally welcomes the content of the Bill. We would, however, strongly favour two specific changes to the face of the Bill. These changes are:
- ❶ **A power to enable the Welsh Government itself to directly fund HE providers in Wales (including colleges and universities):** (Currently, only HEFCW can directly fund universities or colleges for mainstream HE courses under the Framework for Higher Education.) A direct funding power was initially set out by the Welsh Government in its first statement on the content

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<sup>5</sup> See reports of the massive overspend on government loan support for private education organisations in England following recent policy changes there:  
<http://www.theguardian.com/education/2014/may/21/london-college-funding-students-cannot-learn>

of a future Higher Education (Wales) Bill and this was welcomed by the college sector. It was dropped in the Government's later Technical Consultation on the Bill issued in 2013, but no clear justification was offered as to why this useful proposal had been withdrawn. A direct funding power, used judiciously, would enable the Welsh Government to more effectively co-ordinate the provision of higher level learning where various funding mechanisms for higher level qualifications overlap - as in the case of Higher Apprenticeship programmes. The details of how the direct funding power would operate in relation to HEFCW's funding role could be set out in regulations in due course.

One issue that may be resolved by such a funding power for the Welsh Government is the lack of availability of funding for Foundation Degrees and some other HE qualifications within Higher Apprenticeship frameworks. This has been identified by HE managers in colleges as a significant issue which has no apparent resolution. Legal complexities have been cited by officials as one reason why these HE qualifications cannot be funded as part of Higher Apprenticeship programmes in colleges and other work-based learning providers. A direct funding power for the Welsh Government could solve this issue in one stroke.

We would therefore request an amendment to the Bill to enable the Welsh Government to directly fund HE provision where this is expedient.

- **An amendment to the Bill to make it clear that the Financial Code issued by HEFCW may be substantively varied by type of HE provider.** Although it is acknowledged by HEFCW and the Welsh Government that different types of providers may have different arrangements for financial assurance, it would be helpful for this to be made more explicit on the face of the Bill. DfES currently operates a rigorous financial assurance regime for FE colleges that involves many of the types of monitoring and information provision that HEFCW conducts with universities (financial forecasts, annual monitoring returns, etc.). This is currently recognised by HEFCW as fulfilling the requirements of its financial assurance regime for those colleges directly in receipt of HEFCW funding for HE courses. It would clearly be duplicative and highly bureaucratic for HEFCW to run a parallel financial assurance regime for colleges who seek automatic designation for their HE provision. Given that it is expected that most, if not all, colleges in Wales will seek automatic rather than case-by-case designation for their HE provision, this is an important consideration that could be more clearly written into the Bill prior to enactment.

## **How will the Bill change what organisations do currently and what impact will such changes have?**

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16. If the Bill is passed, colleges will have to decide whether to opt in to either automatic designation status or to go for case-by-case designation. Most, if not all, colleges who provide HE courses will likely opt for automatic designation. In some respects the higher education quality assurance arrangements for colleges in relation to their higher education provision will not be greatly affected as the QAA's Higher Education Review process has been set for the next cycle. Colleges who subscribe to the QAA and who are directly funded by HEFCW will likely be subject to a QAA Higher Education Review during this cycle.

## **What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

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17. Barriers to the full implementation of the Bill may include the capacity of HEFCW to discharge its quality assurance duties given its constrained staff and financial resource. Other barriers may include the constraints that may be imposed by EU law on equitable access to student support arrangements and fair competition between providers.

## **Do you have any views on the views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?**

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18. ColegauCymru notes the declaration of the Presiding Officer of the Assembly on 19 May 2014 that the Bill is within the legislative competence of the National Assembly for Wales.

## **What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments etc.)?**

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19. This is a matter of constitutional principle and ColegauCymru notes the differing views of individuals and organisations on this matter. We would expect these arguments to be thoroughly probed and explored by Assembly Members during the passage of the Bill.

## **What are your views on the financial implications of the Bill?**

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20. We note HEFCW's view in its written evidence to the committee that additional resources will be required for it to fulfil its new quality assurance duties.